UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,545	06/25/2003	Victor R. Blake	350078.407	5251

34554 7590 02/25/2008

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVENUE, SUITE 5400
SEATTLE, WA 98104-7092

EXAMINER	
MURDOUGH, JOSHUA A	

ART UNIT	PAPER NUMBER
3621	

MAIL DATE	DELIVERY MODE
02/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/606,545	BLAKE ET AL.	
	Examiner	Art Unit	
	JOSHUA MURDOUGH	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-10,12-18 and 35-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4, 6-10, 12-18 and 35-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 June 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/18/2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Invention I and Species A in the reply filed on 20 December 2007 is acknowledged.

Response to Amendment

2. Applicants' amendment to the claims filed in conjunction with the response to the restriction requirement has been entered. The Examiner feels the added claims do fall within the scope of the elected invention and species. Therefore, claims 1-4, 6-10, 12-18, and 35-45 are currently being examined.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 12, from which claim 18 depends, says, "granting the access is based at least in part on the load-balancing criteria" in lines 9 and 10. Claim 18 recites, "arranged to allow license management independently of any load balancing" in lines 3 and 4. The Examiner believes these limitations conflict, thus making the claim indefinite.

6. Claim 18 further says, "at least some of these network resources and their associated license parameters can be arranged" in line 3. "At least some" implies that somewhere between 2 and all of the resources are being addressed. This is coupled with the optional language, "can," which says it does not necessarily have to be. Therefore, none of the resources are required to fit in and thus, the claim is indefinite because it is not clear if any or all of the resources need to meet the limitation. The Examiner has addressed this claim on the merits as having some that can be, but none are based totally on non-load-balancing criteria.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 4, 6, 7, 10, 12, 13, 15, 18, 37, 39, 40, and 42-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Levett (2004/0117439).

9. As to claim 1, Levett shows:

A method, comprising:

setting license parameters associated with at least one network resource (Figure 1, element 105; Paragraph 0042),

said license parameters including load-balancing criteria (Paragraph 0253);

receiving a request to access the network resource (Paragraph 0041);

determining if the license parameters will permit the requested access to the network resource (Paragraph 0041); and

granting the requested access to the network resource if it is determined that the license parameters permit the requested access to the network resource and providing wherein said granting the access is based at least in part on the load-balancing criteria that are included with said license parameters (Paragraph 0043).

10. As to claims 12 and 18, Levett shows:

A system, comprising:

a means for setting license parameters (Figure 1, element 100) associated with at least one network resource (Figure 1, element 105; Paragraph 0042),

said license parameters including load-balancing criteria (Paragraph 0253);

a means for receiving a request (Figure 1, element 103) to access the network resource (Paragraph 0041); and

a means for determining (Figure 1, element 100) if the license parameters will permit the requested access to the network resource (Paragraph 0041 and Paragraph 0139), and for

granting the requested access to the network resource if it is determined that the license parameters permit the requested access to the network resource and wherein said granting the access is based at least in part on the load-balancing criteria that are included with said license parameters (Paragraph 0043).

11. As to claim 37, Levett shows:

An apparatus, comprising:

a file (Form, Paragraph 0039) adapted to be set with license parameters associated with at least one network resource (Figure 1, element 105; Paragraph 0042); and

a network device (Figure 1, element 105) that includes said file, and being adapted to determine if the license parameters that are set in said file permit a requested access to the network resource (Paragraph 0041) and adapted to grant the requested access to the network resource if the license parameters are determined to permit the requested access (Paragraph 0139), and wherein said network device is adapted to balance load to said at least one network resource using said license parameters (Paragraph 0253).

12. As to claim 42, Levett shows:

An article of manufacture, comprising:

a storage medium storing instructions that are executable by a network device (the steps below are shown as being performed by software, which inherently has to be stored on a storage medium and executable by the device, in order to be performed) to :

check license parameter settings associated with at least one network resource (Paragraph 0043);

determine if the license parameters settings permit a requested access to the at least one network resource (Paragraph 0041); and

grant the requested access to the at least one network resource if the license parameters are determined to permit the requested access (Paragraph 0139), and wherein said grant includes balancing load to the at least one network resource using said license parameters (Paragraph 0253).

13. As to claims 2 and 13, Levett further shows:

setting the license parameters associated with the network resource includes setting license parameters associated with an application available from at least one server (Paragraph 0043).

14. As to claims 4 and 15, Levett further shows:

setting the license parameters associated with the network resource includes allocating licensed access to a plurality of mail servers (Paragraph 0233) based on usernames (Paragraph 0041).

15. As to claim 6, Levett further shows:

setting the license parameters associated with the network resource includes allocating licensed access to mail servers based on geographic information associated with users that request access to the network resource (Paragraph 0253).

16. As to claim 7, Levett further shows:

keeping at least one of a local log or syslog to track information associated with licensed connections to the network resource (Paragraph 0214).

17. As to claim 10, Levett further shows:

arranging a plurality of network resources and their associated license parameters according to a parent/child arrangement (parent/child and master/slave are interchangeable terms, Paragraph 0246).

18. As to claims 39 and 43, Levett further shows:

wherein said at least one resource is an email server (Paragraph 0233).

19. As to claims 40 and 44, Levett further shows:

a data repository (Database layer, Abstract), included in said network device and accessible by said network device, to store log information usable by said network device to determine license usage and license compliance (Paragraph 0214).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

21. Claims 3, 14, 35, 36, 41, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levett in view of Ross (5,553,143).

22. Levett shows all of the elements of claims 1, 12, 37, and 42 from which these claims depend.

23. Levett does not expressly show the access control pertaining to limiting the number of licensed connections. Specifically, determining the total number of allowed and used to ensure that another can be allowed.

24. However, Ross shows restricting access via a license that sets a maximum number of connections (Column 6, lines 33-50).

25. Since each individual element and its function are shown in the prior art, albeit shown in separate reference, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is in the inclusion of the limit of licensed connections as taught by Ross as an additional means of access control used with the teachings of Levett.

26. Thus, simply including another means of access control provides a predictable result, which renders the claims obvious.

27. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levett in view of Verbaas (3,624,305).

28. Levett shows all of the elements of claim 37, from which this claim depends.

29. Levett does not expressly show that the network device is a switch.

30. However, Verbaas shows that the basic device of a network is a switch that connects to a plurality of resources (Column 3, lines 17-20).

31. Since each individual element and its function are shown in the prior art, albeit shown in separate reference, the difference between the claimed subject matter and the prior art rests not

on any individual element or function but in the very combination itself- that is in the substitution of switch as taught by Verbaas in place of the general network device taught by Levett.

32. Thus, simply including the expressly stated switch in place of the generalized network device provides a predictable result, which renders the claims obvious.

33. Claims 8 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Levett in view of Shinzaki (2002/0101994).

34. Levett shows all of the elements of claims 7 and 12, from which these claims depend.

35. Levett does not expressly show a third-party accessing a log to remotely monitor the tracked information.

36. However, Shinzaki shows the recording of a log that is viewable by a third-party in order to certify the activities on the server (Paragraph 0002). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Levett to incorporate third-party review of the logs, as taught by Shinzaki, in order to ensure proper usage of the resource (Shinzaki, Paragraph 0002)

37. Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levett and Ross as applied to claims 3 and 14 above, and further in view of Eggleston (5,764,899).

38. Levett shows all of the elements of claims 1 and 12 which these claims depend from.

39. Ross shows the limiting of the number of connections to a resource as shown in the above rejection to claims 3 and 14.

40. Levett and Ross do not show a warning being provided as the number of connections approaches the limit.

41. However, Eggleston shows an alert being provided to a user when a limit is approached (Columns 3-4, lines 57-3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Levett to include a warning as the number of connections approaches the limit, in order to, allow better monitoring of traffic and to give more advanced warning that the licensed number of connections my need to be increased.

42.

Claim Interpretations

43. Applicants are reminded that "claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function." (MPEP 2114) Therefore, the software package or packages loaded onto a device do not differentiate it from the prior art.

44. Furthermore, "adapted for" clauses are considered optional language unless it states a condition that is material to patentability. (MPEP 2111.04) As noted above, structural limitations are needed in order for a limitation in an apparatus to be material to patentability.

45. Therefore, while the functional and optional limitations have been addressed above, they still are not viewed as having sufficient patentable weight to distinguish the claims over the prior art.

46.

Conclusion

47. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

48. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

49. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. M.
Examiner, Art Unit 3621

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621